

Draft: 6/27/2018

Final: 7/25/2018

**NELSON COUNTY PLANNING COMMISSION
MEETING MINUTES
June 27, 2018**

Present: Chair Mike Harman, Commissioners Mark Stapleton, Philippa Proulx, Rob Goad and Tommy Bruguere

Staff Present: Sandy Shackelford, Director of Planning & Zoning and Emily Hjulstrom, Secretary

Call to Order: Chair Harman called the meeting to order at 7:03 P. M. in the General District Courtroom, County Courthouse, Lovington.

Approval of minutes: May 23rd, 2018

Ms. Proulx motioned that the minutes from May 23rd, 2018 be approved. Mr. Stapleton seconded the motion The minutes were approved with a vote of 5-0.

Public Hearings:

- **Special Use Permit #2018-05 – Farm Winery permanent remote retail and Restaurant**

Mr. Goad abstained from the discussion.

Ms. Shackelford presented the following and showed images from the site plan:

Draft: 6/27/2018

Final: 7/25/2018

Nelson County Planning Commission

To: Planning Commission

From: Sandra M. Shackelford, Director of Planning & Zoning

Date: June 15, 2018

Re: Special Use Permit #2018-05 – Rockfish Valley Highway

BACKGROUND: This is a request for a special use permit on property zoned A-1, Agricultural to allow for the construction of a building that will contain three suites. One of the suites will be used as a nano-brewery where farm products used by the facility will be grown on-site. This will be considered a farm brewery based on the state definition and does not require a special use permit. One of the suites will be used as a farm winery permanent remote retail establishment (§4-1-16a) and the other will be used as a restaurant (§4-1-34a).

Public Hearings Scheduled: P/C – June 27, 2018; Board – July 10, 2018 (tentative)

Location / Election District: 9485 Rockfish Valley Highway / North Election District

Tax Map Number(s) / Total acreage: 6-A-131 & 6-A-163D / 10.937 acres +/-

Applicant Contact Information: Todd Rath, 161 Wood House Lane, Nellysford, VA 22958; 434-996-7133.

Comments: The applicant applied for, and was granted, a special use permit previously for six one-bedroom cabins and to convert the existing building on the east side of the property into a tasting room/restaurant and use the storage building beside it as an accessory to that use. He had originally requested additional special use permits for other businesses that would potentially be interested in locating on the property, but at the time of the request, the businesses that would likely locate in the space had not been identified and the applicant withdrew that portion of the request prior to final action being taken by the Board of Supervisors.

At this point, the applicant has signed letters of intent from two businesses (farm brewery not needing a SUP and farm winery permanent remote retail establishment) that would occupy the proposed building, and additionally has a potential tenant that would like to use the third space for a chocolate/gelato shop that would fall under the definition of a restaurant in the zoning ordinance.

DISCUSSION:

Land Use / Floodplain: This area is rural in nature. There are no 100-year flood plains on the property.

Access and Traffic: Property is accessed from Rockfish Valley Highway (Route VA-151 – AADT 4,800 trips per day). The proposed development will generate additional traffic along this corridor, but a traffic impact analysis is not required at this time. VDOT previously reviewed the proposed development when the initial special use permits were requested. They indicated that the entrance would need to be relocated to align with the entrance into Silverback Distillery. Future phases of development would require a right turn taper and a left turn lane, but those are not needed at this time. The full list of comments from VDOT based on their review of this phase of development are included in the packet for your further review.

Utilities: Property is served by private well and septic systems.

Conditions: The Planning Commission may recommend, and the Board of Supervisors may impose, reasonable conditions upon the approval of the special use permit. Conditions placed on the initial request approved by the Board of Supervisors included a 9:00 pm amplified music time limit, landscaping along Route 151, and a fence to be built along the northern property line to extend past Ms. McGatha's house to provide a visual barrier. Staff recommends that these conditions also be applied to this next request should approval be granted.

Comprehensive Plan: This property is located in an area designated as rural and farming use based on the current Comprehensive Plan.

RECOMMENDATION: The approval of special use permits should be based on the following factors:

1. The use shall not tend to change the character and established pattern of development of the area or community in which it proposed to locate. *The proposed use could be considered to be consistent with the development pattern along the 151 corridor in this general area. However, there is concern about continued expansion of higher intensity uses along 151.*
2. The use shall be in harmony with the uses permitted by right in the zoning district and shall not affect adversely the use of neighboring property. *The proposed could be considered complimentary to other uses in the area. The Silverback Distillery is located directly across the highway from this site. The businesses that would potentially be permitted are small in scale and are similar in nature to the other existing businesses in the area. There is pushback from the neighboring property owners that the use would not have adverse impacts on the residential uses in the near vicinity of this request.*
3. The proposed use shall be adequately served by essential public or private water and sewer facilities. *The applicant will work with the engineers and the health department to ensure adequate facilities are provided.*
4. The proposed use shall not result in the destruction, loss or damage or any feature determined to be of significant ecological, scenic or historical importance. *There do not appear to be significant ecological, scenic or historical features that would be impacted by the proposed use.*

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Final: 7/25/2018

Ms. Shackelford also noted that the applicant had submitted the minor site plan before the meeting and that the plan submitted in the Planning Commission packet is meant to be supplemental to the minor site plan that they had received before.

Ms. Proulx asked Ms. Shackelford to clarify which parcels were involved in the request. Ms. Shackelford noted that the applicant owned three parcels but that only two of them (TMs #6-A-131 and #6-A-163D) are involved in the application. Ms. Proulx asked if the applicant would need to combine the parcels prior to getting building permits. Ms. Shackelford noted that he would and that any approval by the Planning Commission would not be a final zoning approval; there would be a separate approval for the Minor Site Plan

Ms. Proulx noted that she did not receive a site plan with the application. Ms. Shackelford noted that the applicant had submitted the site plan but that the Planning and Zoning office had not sent it to the Planning Commission in their packet because they had already received it previously. Ms. Proulx noted that the site plan was not the proper scale. Ms. Shackelford noted that the Planning Commission could postpone the application for another month if they felt that they needed more time to review the application.

Mr. Rath noted that this will cause another delay to his project that is not the fault of himself or his team. Mr. Rath presented the following information:

10 Year Traffic Study

Effects / Growth of 151 & Turn Offs at 6 to 29
(Martins Store)

10 Years of Traffic Data (Pulled from VDOT Directly)

AADT - Annual Average Daily Traffic (Includes Weekends)

- AADT from 2007 to 2017 has gone up from 7400 cars per day to 8500 cars per day. Increase of less than 15% in total, or less than 1.5% / Year
- Largest jump 2013 to 2014, up 1000 car counts / day.
- That same jump occurred in turn off's to Route 6 to Route 29 (Martins Store / Cut through). Jumped 600 Cars.
- So 60% of traffic increase attributed to cut through.
- Conclusions? Technology maybe? Cell Service....???

Afton Depot Plan from the Start

- **Presented concept to planning office. ENTIRE CONCEPT.**
- **Planning office welcomed it, but advised to only present things that are ready to go NOW.**
- **Presented Blue Toad Hard Cider Tasting Room, & 6 Cabins. Explained the immediate need to get going now to move our business since those both were ready NOW.**
- **Approval.**
- **Once for lease signs went up, calls started happening, we now have letters of intent from 3 Businesses, and here we are.**

Approvals - 100%

- **VDOT - 100% for Blue Toad, Restaurant, Cabins, and 3 Unit Building.**
- **Soils - 100% for all of the above & future 2 Unit Building and up to 14 cabins.**
- **TJSWCD - 100% Approved**
- **County Approval on Blue Toad Hard Cider Tasting Room, Restaurant, and 6 Cabins. 100%.*****
- *****Build a \$20,000 380' fence between Rockfish Orchard & Afton Depot Land. No amplified music after 9pm.**
- **Well location. 100% Approved and Located for land design. (Not drilled yet, but will be to commercial specifications.)**
- **DEQ - 2nd Round of comments, coming in soon we hope...**
- **Design, Architecture, Engineering, Etc... Complete and waiting...**

Understanding the Experts - This to Clear up the Untrue Statements (armchair quarterbacks)

VDOT - They are the experts in traffic, and throughput. Safety! Their job is to keep traffic moving at the maximum safe speed per each and every inch of road. Also, their engineers decide on feasible entrances, **NOT PRIVATE ENGINEERS.**

VDH - Virginia Department of Health. They handle water quality for use, waste water for septic and storage of food etc....

DEQ - They are all about, ENVIRONMENTAL QUALITY. They make you engineer a plan, they comment within 45 days by law, if / when approved they police the plan, sometimes daily for the life of the project. Engineering of this part is well over \$12,000 plus another \$4,500 review fee. Serious business...

Economics 101

- From Day 1 we had plans to bring shopping, and tourists to the Afton Area.
- Create a “Town Center / Epi-Center” Afton. Hence the name “Afton Depot”
- To pay for the engineering, earth movement, construction of all needed drives, parking, safety exits, etc... It takes more than just a small tasting room, restaurant and cabins.
- Hence the need to attract more Agro Business, which Nelson County Needs and Wants in order to sustain growing expenses.

Nelson County DUI Charges on the Decline

Written at the end of 2012, Almost 2013. From 2007 to 2012 businesses that opened focused on Alcohol on 151.... Blue Mountain, Blue Toad Pub, Wild Wolf, Bold Rock, Devils Backbone.

<http://www.nbc29.com/story/19988560/nelson-county-dui-charges-on-the-decline>

“The number of wineries and breweries has gone up, but the number of driving under the influence (DUI) charges in Nelson County has gone down. In 2008, there were 79 reported DUI cases in Nelson County. With the end of the year quickly approaching, the count is only up to 27.”

The 4 Pillars of a S.U.P.

The Nelson County Department of Planning & Zoning strategically works to:

- protect and strengthen the County's special sense of place and extremely high quality of life;

Afton Depot has already attracted award winning beverage manufacturers as well creative foods for the area helping the county's special sense of place. One of the tenants in this project have already proven in their other projects a strong sense of community and quality of life.

- facilitate the growth of a strong local economy;

There is no where else in the county that has brought this quality of a project or tenants better than what we are presenting today. We are building small structure not only to support our local business but to attract other great small businesses.

Cont. The 4 Pillars of a S.U.P.

- protect and enhance property values;

What is there now, and what could be there in the future by right severely hurts values of local properties and the image of Nelson County. It's currently a run down property with 4 run down structures and was / is being used as a dumping site of random trash.

- meet the Code of Virginia requirements to, "improve the public health, safety, convenience, [and] welfare of its citizens," (15.2-2200) and to, "facilitate the creation of a convenient, attractive, and harmonious community..." (15.2-2283).

See our Architects presentation coming up next.... We are mimicking the original "Afton Depot" Building.

Cont. 4 Pillars of a S.U.P

In Summary....

We meet all of requirements of Department of Nelson County Planning & Zoning and what is strategically being worked towards.

**Questions Regarding the 4 Pillars /
Guidelines? Issues with our Summary?**

Blue Toad Hard Cider Impact to Nelson County

- Over \$150,000 in our last calendar year in Taxable Wages.
- Food & Sales Taxes equalling 5% of Sales to the county.
- Over 500,000 lbs of Nelson County Apples processed and purchased. Not one apple or chinese apple concentrate bought, EVER!
- Helped establish Nelson County's 1st modern apple press operation that created 2 full time jobs and now processing over 300,000 gallons of cider /year, or \$900,000+ in revenue shipping across the entire state and into North Carolina.
- Rehabbed Wintegreen Winery, one of the areas 1st, into a cidery to keep the land and buildings paying taxes to the county coffers.
- Numerous donations and community events.

In Summary - Why we are here "Again" Today

Board of Supervisors was ready to approve in our last meeting, until one supervisor lost his cool, trashing all of Nelson County's best and biggest businesses.

The Chairman then granted 30 day wait period.

At that time, residents hired council to review the process and procedure of our submittals etc...

From there, the Residents and Council decided a lawsuit against our county was a good idea.

We, Rockfish Valley Events LLC, withdrew our application and worked with the county toward this date / re-application. For which, our goal is to resolve any outstanding issues tonight.

Questions?

Comments?

Concerns?

Mr. Rath noted that the building that they were talking about today was only 3700 sq ft.

Ms. Proulx asked how a chocolate maker would be considered a restaurant. Mr. Simon noted that he would address this when he speaks to the Planning Commission.

Mr. Rath asked why Mr. Goad was abstaining from the public hearing. The Planning Commission was unable to answer his question.

Greg Simon is the architect for the Afton Depot project. He asked for clarification on the information the Planning Commission was missing that was not included in their packets. He presented the following information:

Draft: 6/27/2018

Final: 7/25/2018

Afton Depot

The Gateway to the Rockfish Valley

Retail Building #2

Board of Supervisors meeting - April 10, 2018



AFTON DEPOT

SVN
599 Southlake Blvd.
Richmond, Virginia 23236
434-851-1414

Rockfish Valley Events, LLC



Draft: 6/27/2018

Final: 7/25/2018

Project Team

Owner/Developer	Rockfish Valley Events, LLC
Commercial Real Estate Agent	SVN/Cornerstone Commercial
Civil Engineering	W & W Associates
Architecture	Studio 1230 Architecture
PME Engineering	Oneil Engineering Services
Structural Engineering	ACE Applegate Consulting Engineers
Waste Water Engineering	Aqua Nova Engineering, PLC

AFTON DEPOT

 SVN
599 Southlake Blvd.
Richmond, Virginia 23226
434-851-1414

Rockfish Valley Events, LLC



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Design Goals & Objectives

Re-use existing buildings where possible to reduce environmental impact and create new buildings using durable materials, appropriate for this region.

Provide Architectural design that complements the aesthetic character and style of traditional structures in the Rockfish Valley.

Leave full growth hardwood trees standing and in tact, creating focal points for the site.

Create a small commerce agro business node for Afton Virginia that is family friendly and promotes economic growth for local businesses.



AFTON DEPOT

SVN
199 Southlake Blvd.
Richmond, Virginia 23236
434-851-1414

Rockfish Valley Events, LLC





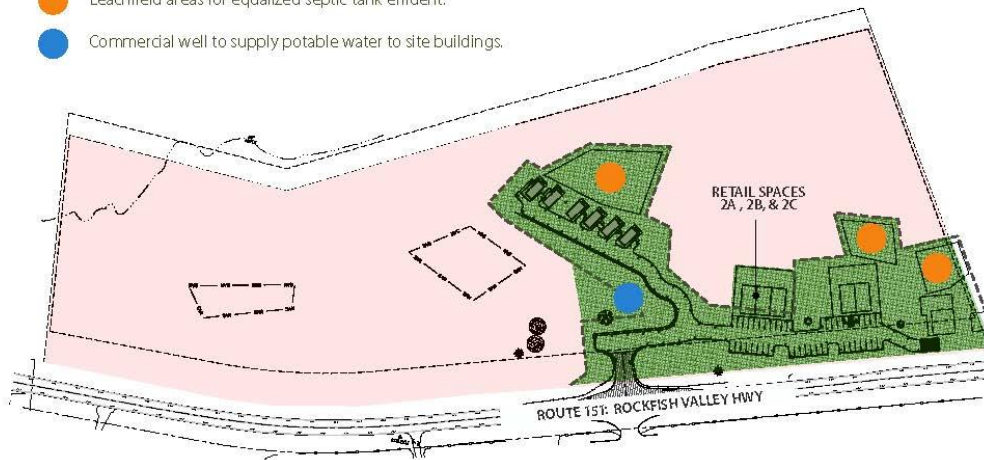
Draft: 6/27/2018

Final: 7/25/2018

Overall Site Plan

16.3 acres

-  Leachfield areas for equalized septic tank effluent.
-  Commercial well to supply potable water to site buildings.



AFTON DEPOT

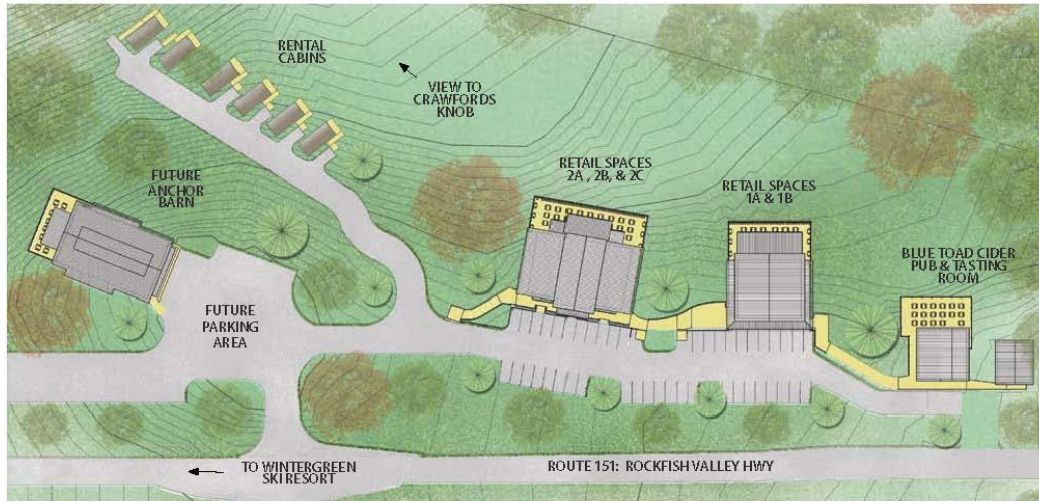
 599 Southlake Blvd.
Richmond, Virginia 23236
434-851-1414

Rockfish Valley Events, LLC



Site Plan

Approx. 6.35 acres



AFTON DEPOT

SVN
599 Southlake Blvd.
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434-851-1414

Rockfish Valley Events, LLC



Draft: 6/27/2018

Final: 7/25/2018

Retail Building #2



- Pre-finished metal roofing
- Insulated windows and doors.
Color = dark bronze/grey
- Natural wood board and
batten siding with matching
window and door trim
- Exterior wood decks and railing
- Horizontal board screening
below deck
- Heavy timber/wood framing and
covered entrances @ each retail unit

AFTON DEPOT

SVN
599 Southside Blvd.
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434-851-1454

Rockfish Valley Events, LLC



Draft: 6/27/2018

Final: 7/25/2018



View of Retail Building #2 from Rt. 151

AFTON DEPOT

SVN
533 Southlake Blvd.
Richmond, Virginia 23236
434-851-1454

Rockfish Valley Events, LLC



Draft: 6/27/2018

Final: 7/25/2018



View of Retail Building #2 from rear deck

AFTON DEPOT

SVN
533 Southlake Blvd
Richmond, Virginia 23236
434-851-1454

Rockfish Valley Events, LLC



Mr. Simon noted that the developers are only using one building and that there will be three retail spaces available to small local businesses.

Mr. Harman opened the public hearing at 7:39.

Jeri Lloyd lives at 9322 Rockfish Valley Highway and has lived in Afton since 1991. She lives directly across from the proposed project and is adamantly opposed to it. She noted that the project goes against the Rockfish Valley Area Plan survey results. She noted that in the RVAP 98% of results say that respondents want mountain scenery, clean water, clean air, conservation of environmental features, and dark skies. She also noted that 96% want to protect and preserve the rural character of the valley and that 79% felt that managed or reduced development was important. She noted that zoning is not harmonious in Nelson County. She explained that there are multiple retail locations involved in the project and that it

Draft: 6/27/2018

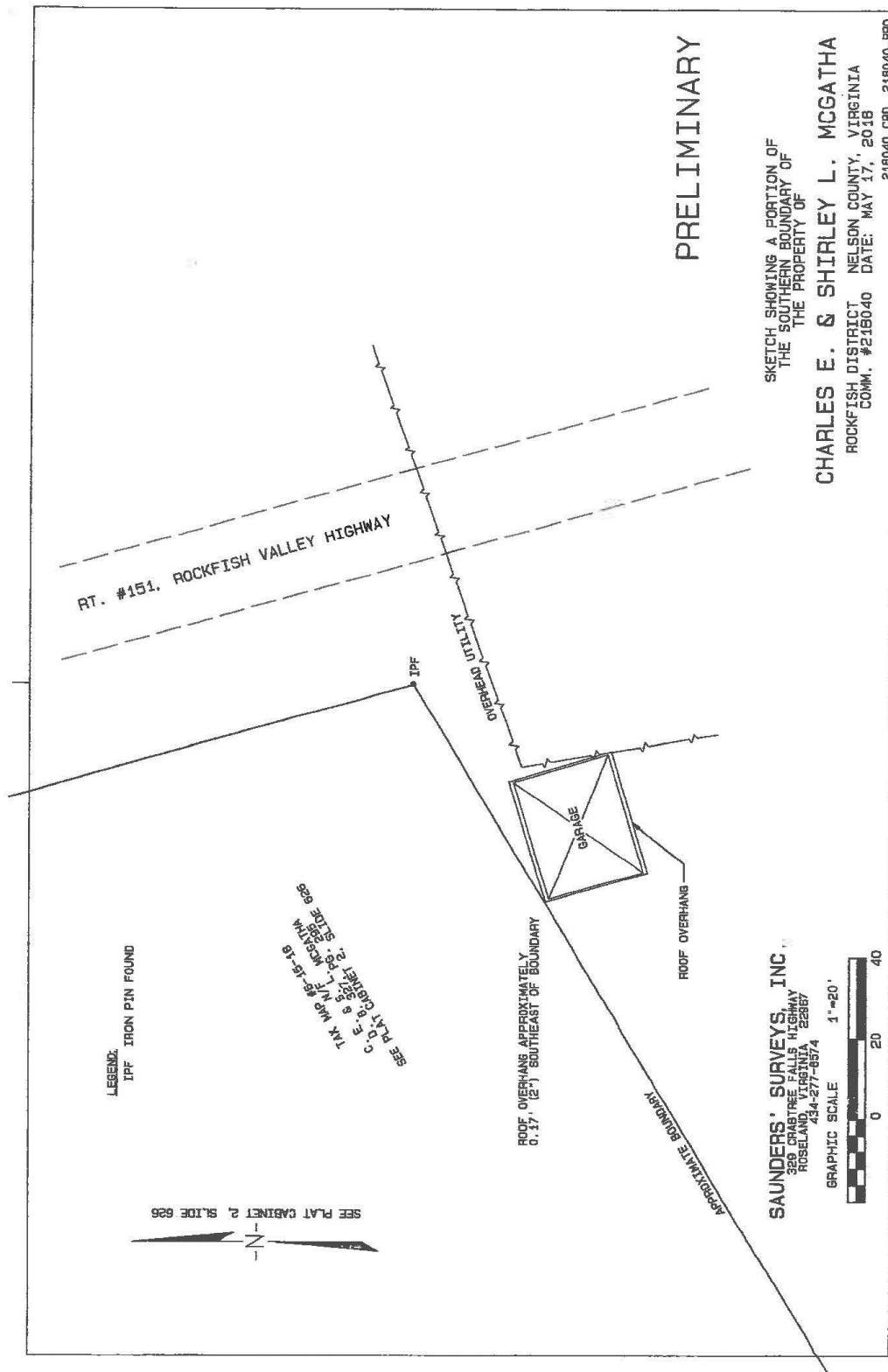
Final: 7/25/2018

is not compatible with the surrounding community. She noted that Ms. Shackelford said that the use is consistent with development on route 151. She noted that according to the code of VA, Nelson County has the responsibility and duty to protect against one or more of the following; overcrowding of land, obstruction of light and air, danger and congestion in travel and transportation, and to provide for the preservation of agriculture and forestial lands and other lands of significance for the protection of the natural environment. She noted that this development will cause traffic to increase on 151 and change the nature of the area. She noted that 96% of respondents to the survey said that safe and reasonable levels of traffic and congestion on roads is important. She explained that RVAP refers to section 15.2-2284 of the Virginia code, that the zoning ordinance and zoning map must reasonably consider the existing use and character, the transportation requirements of the community, the conservation of properties and their values, and the encouragement of the most appropriate use of land throughout the locality. She noted that the proposal does not keep with existing zoning, use, or character of the community. She requested that the Planning Commission deny the application for any development in the Afton Depot area.

Draft: 6/27/2018

Final: 7/25/2018

Shirley McGatha lives at 33 Rockfish Orchard Drive. Ms. McGatha presented the following information:



Draft: 6/27/2018

Final: 7/25/2018

Good evening, my name is Shirley McGatha, I live at 43 Rockfish Orchard Drive, Afton Virginia.

This is the third time I have appeared before you, you know my concerns, they are still the same, encroachment on my property, increased traffic, noise and privacy.

However, I have a new concern tonight, this one is zoning. Recently my property was re-surveyed by Mr. Saunders. It was noted on the survey that the building which is adjacent to my property line is 2 inches from the property line. When we purchased the property in 1992 this building was grandfathered in as a garage- which was its previous use. According to zoning laws in order for the building to be grandfathered in it must be used for the purpose it was originally intended. Also, the Board of Supervisors approved phase 1 of Mr Rath's special use permit with the stipulation that an 8 foot privacy fence be placed between the 2 properties. The zoning states that this fence should be 20 feet inside his property line- how is that going to happen when the building is 2 inches from my property line- is the fence going down the middle of his building. The building he wants to use as a package goods store or storage not a garage?

Draft: 6/27/2018

Final: 7/25/2018

Linda Armentrout lives at 7286 Rockfish Valley Hwy. She asked that the Planning Commission not approve the application. She noted that the road is already busy and dangerous and that there is a lack of signage in the area and there are a lot of people speeding. She noted that adding more signs can cause scenic pollution on the road. She noted that at Blue Mountain there have been many near collisions. She noted that she does not see road checks on the road and wonders if a lack of enforcement is the real reason for DUI numbers not going up.

Ed Koeppen lives at 22 Old Turtle Place in Nellysford. Mr. Koeppen is a commercial real estate broker that represents Todd Rath and the Afton Depot project. He has been a broker for over 25 years and has found quality tenants for the Afton Depot project. He noted that between the five tenants he has lined up, there will be approximately 20 new jobs created and increased tax revenue for Nelson County. He noted that one of the reasons he came to Nelson County was to enjoy the local wineries and breweries as well as the scenic beauty of the county. He noted that the building fits in with the surrounding buildings and uses. He recommends that the Planning Commission approve the proposal.

Russ Simpson lives at 37 Laurel Rd and noted that he doesn't know Mr. Rath. He noted that he has been a lifelong resident of Nelson and that he remembers when Wintergreen Resort came to the County. He noted that he is a member of the Board of Directors of the Chamber of Commerce and he sees a lot of businesses coming into the county and bringing money with them. He noted that sobriety is a law enforcement issue. He noted that Mr. Rath has met the contingencies that he is supposed to and that he should be allowed to go ahead with his project.

Brenda Saunders lives at 9367 Dick Woods Rd. She noted that she lives between Veritas and Blue Ridge Brewery. She noted that since these businesses have been approved her life has been hell. She noted

Draft: 6/27/2018

Final: 7/25/2018

that the noise and cars are constant and disturb her enjoyment of her land. She noted that there are cars backed up all up and down the road and that they don't get ticketed even after she calls the police. She noted that no one is checking on DUIs and that is why the DUI numbers are down. She noted that she personally knows someone in the Sheriff's office that has told her that they are told to stand down and not patrol over there on Friday and Saturday nights. She noted that the Sheriff's office is also down two people. She noted that she doesn't see any money from the county and that business contributing to the county coffers doesn't help her. She noted that the only money she sees from the county is when they regrade her road. She noted that once the applicant gets their project approved, they will keep coming back for more.

Tracy Altschuler presented the following:

Draft: 6/27/2018

Final: 7/25/2018

Submitted @ PC mtg. 6/27/2018

Hello, my name is Tracy Altschuler, I am the daughter of Shirley McGatha and I am currently living at 43 Rockfish Orchard Drive, Afton.

Thank you for the opportunity to provide comment on the proposed development of 9485 Rockfish Valley Hwy.

The land currently proposed for development was originally developed in the 1920's when the water quality standards, well and sewer construction requirements were minimal compared to today. Also, residential requirements are different than commercial requirements.

The proposed development will create a substantial demand of groundwater on the developed property and therefore, poses a significant concern for the continued performance of my drinking water well located at 43 Rockfish Orchard Drive. In addition to the performance of wells on other surrounding properties. Because of this, I have the following questions that I would like to be addressed:

1. Regarding the existing well at 9485 Rockfish Valley Hwy. Is the well designed and constructed in such a way to support the proposed development? Is it deep enough? Is it properly connected with deeper ground water so as not to interfere with neighboring wells? What is the sustained capacity of the existing well at 9485 Rockfish Valley Hwy? Has the existing well been tested to establish the sustained production capacity of well? If the proposed development includes multiple water uses (e.g., including potential rentals and other proposed commercial uses), has the amount of water required for those uses been compared with the capacity of the well? What about during drought conditions? Is the well properly constructed to protect it from contamination due to surface runoff? Is the proposed development expected to affect surface runoff in such a way that could adversely impact my ponds, well or property? According to the Nelson County Zoning Law- Appendix A 3: " the location of existing water wells and other existing or potential sources of water supply in the area to be established. The Board of Supervisors shall require satisfactory proof that the proposed activity will not disturb the quality or production of water source. Data describing area water quality and quantity shall be provided by the applicant." Do we have satisfactory proof to demonstrate these conditions? I would like to request such proof prior to any further approval of proposed development.
2. If the proposed development ^{states} states to draw down water levels in my well or pond - what will be done to correct the situation? Will there be any provision in the development permit to extend or reconstruct my well in the event that it is adversely impacted?
3. Because there is no municipal sewer system available in the area, we assume that the sewage for the distillery, cabins ect. Will need to discharge through some sort of septic system and or percolation field. This needs to be thoroughly supported by percolation testing, as well as designed and installed by competent professionals. Without

appropriate testing, design and installation as well as maintenance, discharge related to development at 9485 Rockfish Orchard Hwy could affect water quality in surrounding surface water and drinking water wells. Per Nelson County Zoning 4-2-2: " for permitted uses utilizing sewage disposal systems, the required area for any such use shall be approved by the health official. The administration may require greater area is considered necessary by the health official. " What is the health official recommending? What testing has be conducted? How will the appropriate design, installation and maintenance of such system be documented and enforced ? I would like to see documentation of the health official's report?

4. Finally, what remedies will be available to surrounding property owners, if at some future time, the developed property's use of water and sewer discharges adversely impact water quality, well output or other environmental conditions at surrounding properties?

Draft: 6/27/2018

Final: 7/25/2018

Ian Kelly lives at 220 Rockfish Orchard Dr. He noted that he is not against growth, beer, Todd Rath, or Rockfish Valley Events. He noted that he is against development without a plan, commercial properties in residential areas, and destruction of quality of life for his family and neighbors. He noted that this project will have an effect on surrounding land owners and hurt their home values. He noted that this is the wrong spot for the business, that the land is too small, and the surrounding properties do not fit it. He noted that other campgrounds/breweries/wineries have much more land around them and 24 hour surveillance. He noted that a comprehensive growth plan needs to be developed to offset the destruction of the pipeline and to look at places where development has made areas inhospitable to the residents like in the Beech Grove and Nellysford areas.

Connie Fox lives at 932 Rockfish Valley Hwy. She noted that she has lived on 151 for over 20 years. She noted that her son-in-law from Northern Virginia says that 151 is a dangerous road. She noted that there is virtually no shoulder to the road near her home. She noted that she was rear ended at 65 mph while waiting to pull into her driveway. She noted that she has a friend that is a state trooper and that they said they are unable to pull people over or have sobriety checkpoints there because there is no shoulder. She noted that there are many skid marks on the road.

Deborah Justice lives at 507 Rockfish Orchard Drive. She noted that she has a petition with over 120 signatures to not allow any more alcohol related businesses on route 151. She added that she does not want a town center in Afton and that they have Nellysford for shopping. She noted that the property was referred to as a dump but that it was not a dump when it was used and inhabited in the past.

Christine DeJong lives at 305 Falling Springs Dr. with her husband Phillip. She noted that she moved to Nelson County with her husband recently for the beauty and aesthetics. She noted that she is next to Mr. Rath's property and that she has plans to have animals on her land. She is worried about run

Draft: 6/27/2018

Final: 7/25/2018

off from the business going into her pasture. She is also concerned about her quality of water and access to water in the case of a drought. She noted that once development starts she is afraid it won't stop. She noted that the application should have a Major Site Plan because of how big it is. Mr. Stapleton asked Ms. DeJong the distance from her house to the project. She noted that her house is on a hill but that she is more concerned about her pasture that joins Mr. Rath's property. Ms. DeJong noted that she is able to see the development from her house.

Margaret Flather lives at 507 Rockfish Orchard Dr. She noted that she thinks the Planning Commission should take their time to review the application. She noted that the retail space will hurt other retail spaces around the area. She also noted that the project would hurt other businesses because tourists wouldn't need to go elsewhere. She noted that this was going to overwhelm the road, police force, and fire department. She noted that the Inn down the road was self check-in and is worried about the cabins being self check-in. She recommended that the building be one story so that it does not affect neighbors' views of the mountains. She suggested the following conditions:

A minimal list of conditions to recommend to the Board of Supervisors regardless of whether there is a recommendation for approval or denial.

1. Fencing. Please help protect us and our quality of life and property values by requiring the Developer construct an 8 foot privacy fence along the entire length of the North side of this property.
2. Around the rest of the property, require a 5 board fence at the developer's expense, with clear signs every 10 feet indicating that there is no access or trespassing to adjacent property. Require that these fences and signs be maintained in good repair at all times.
3. Require the removal of the old garage that encroaches on the neighbors property, and does not meet the current setback requirements.
4. Do not allow any more cabins and make sure that there is paid staff on the property 24 hours a day, 7 days a week.
5. Do not allow any outdoor fires or grilling.
6. Do not allow any amplified music, and only allow other music after 9 pm Thursday through Saturday, and none after 7 pm Sunday through Wednesday. An 8' sound blocking fence should be required around the perimeter of each and every deck.
7. Do not allow the retail space to contain more alcohol related business than the Cider Pub already approved.
8. Do not allow any EVENTS greater than Category One (No more than 500 attendees) on the entire property.
9. Require low level, fully shielded lighting to protect the night sky.

Draft: 6/27/2018

Final: 7/25/2018

Michael Fox and his wife live at 9232 Rockfish Valley Highway, he noted that he lives beside the building that was formerly Blue Toad and directly across from the subject parcel. He noted that the property containing the distillery, brewery, and proposed site was all land that his ancestors bought in 1759. He noted that the land is of significance to his family. He noted that when D'Ambola applied to have a restaurant, he, his father, and grandfather expressed their concerns to the Board. He noted that although he was told that these negative concerns would not happen, they did when Blue Toad moved in to the property. He noted that there has been loud music, loud customers, profanity, trash, increased traffic, motorcycles, dumpsters being emptied early in the morning, delivery trucks, and lighting from the parking lot. He is afraid that once the SUP is granted to Todd Rath, he will be able to start doing more things.

Maynard Sipe is an attorney and professional planner. He noted that he focuses exclusively on land use and zoning issues and that he has represented developers, local governments, and citizens. He asked the Planning Commission to look at the bigger picture. He noted that he does not believe that the proposed use fits the Comprehensive Plan and that it is not compatible with the rural/farming district. He noted that the Comprehensive Plan does not call for advancing commercial uses in that area. He noted that this is reflected in the A-1 (Agricultural) section of the Zoning Ordinance. He noted that it is not compatible with existing businesses along 151, as most of those are single businesses housed in an individual structure. He explained that there is one professional office building across from the BP station but that the office uses are low intensity in comparison. He recommended that the applicant try to rezone or find another parcel to build his project on. He noted that on page 2 of the staff report he does not believe that the use will meet that criteria. He noted that he has not seen information that shows the applicant has adequate water and sewer plans. He recommended that the Planning Commission provide a list of conditions to the Board of Supervisors when they make a recommendation and that they table the application until they have fully reviewed the materials. He asked that if it comes to a vote at under its current status, that the Planning Commission recommend denial of the application.

Greg Simon requested an opportunity to respond to the concerns raised. He noted that the water and sewer are required to meet VDH and DEQ regulations and that these are state agencies. He also mentioned that many of the approvals from other agencies that are still pending are waiting on other things to be done. He noted that a lot of engineering and approvals are already done and that the documentation will be available at the Planning and Zoning Department. He explained that almost all land starts as being zoned Agricultural and that as things develop they are rezoned to meet the development.

Mr. Simon noted that the garage being close to the property line needs to be looked at. He explained that if they were to remove the building then they would not be able to build one in the same place. He noted that they received a survey of the land when it was purchased. They then did a formal engineering effort from that survey and the engineering is what costs a lot of money. He noted that he could provide the percentage of site usage for the land. He noted that everyone is required to have engineered storm water and run off when building in excess of 1 acre.

Mr. Simon then explained that the cabins will not be self check-in. He noted that more fencing could be open for discussion. He noted that they are using LED lights with articulating light nodes that can control the breadth of where the light falls. He noted that they will have to add light poles but that they will also be LED. He added that the special use permitting process is not something that is in the applicant's control.

Ms. Proulx asked if the survey showed how close the garage was to the McGatha property. Mr. Simon noted that it did but that they couldn't do anything about the building setback aside from demolishing it. He explained that if they modified the building then they would need to bring it up to code. He noted that he is happy to meet with any residents to answer their questions. Ms. Proulx asked when the survey was done. Mr. Simon noted that he does not know when it was done but that he could get that information to her.

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Final: 7/25/2018

Mr. Rath noted that he has been more than willing to meet with every neighbor and that he is disturbed by the behavior of the audience while he and Mr. Simon are trying to explain their project. He noted that he is still open to compromise with his neighbors.

Ms. Proulx made a motion to continue the public hearing to the following Planning Commission meeting in July. Mr. Stapleton seconded the motion.

Vote: 3-1

Favor:

- Philippa Proulx
- Mark Stapleton
- Mike Harman

Opposed:

- Tommy Bruguere

Mr. Bruguere stated that he does not believe there should be another public hearing. Ms. Proulx explained that she believes the public should have more time to review the application materials. Ms. Proulx noted that she believes the application does not fit the area. She questioned the gelato business being considered a restaurant. Ms. Shackelford explained that any place where food is served and there is a place to consume it on the premises considered a restaurant. Ms. Proulx noted that the application is not for retail and it states 'retail' in the application materials. Mr. Rath noted that they did not apply for retail and that the word 'retail' is not on the actual application. Ms. Proulx also noted that she does not believe the minor site plan meets minor site plan requirements.

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Final: 7/25/2018

Mr. Stapleton asked the applicant to have the answers to the following questions ready the next public hearing:

- He asked the applicant to show what progress has been seen since the approval of phase 1.
- Mr. Stapleton noted that he was ball parking the outdoor seating at being 200 people by looking at the materials he has. He asked the applicant to state why they needed this much outdoor seating.
- He asked what the building next to the applied for building is for. Ms. Shackelford noted that the building has not been applied for yet.
- Mr. Stapleton asked for more information on the garage and the setbacks of the land. Ms. Shackelford explained that when a nonconforming use ceases to be in use for two years then it loses its status as nonconforming. She noted that this garage is a nonconforming building and not a use, this means that the only way for it to lose its nonconforming status is for it to be removed.
- Mr. Stapleton asked for more information on the commercial forecasted water usage and its impact on the surrounding area.

Other Business:

- **Rockfish Valley Area Plan discussion**

Ms. Shackelford noted that when the RVAP was converted to an editable format she found that it required a lot more rewriting.

- Ms. Shackelford thanked Mr. Goad for his time with the Planning Commission. Mr. Goad thanked the Planning Commission and said that it has been an honor to serve with them.

Board of Supervisors Report:

No report from the BOS

Adjournment:

Draft: 6/27/2018

Final: 7/25/2018

Mr. Bruguere made a motion to adjourn the meeting at 8:59 pm. Ms. Proulx seconded the motion. The motion was passed with a vote of 4-0.

Respectfully submitted,



Emily Hjulstrom
Secretary, Planning & Zoning